

**COMMENTS BY MR. ARUN JAITLEY, Union Minister For Law And Justice,
in defence of the GOI Domestic Violence Bill
given to women's groups on March 15, 2002**

At a meeting organised on 15th March 02, by Centre for Social Research, Mr. Arun Jaitley, the Union Law Minister and Ms. Indira Jaising were invited to speak on the Domestic Violence Bill 2001. These are minutes of Mr. Jaitley's and Ms. Jaising's presentations.

Mr. Jaitley started by saying how difficult is the law making process and a law takes many years to get passed and come into force. He said that at the same time, it is important to get the agenda across. He said that as a matter of routine, Bills get referred to the Select Committee of the Parliament and so will the Domestic Violence Bill, so there's not much to worry in this regard. He gave example of the Christian Marriages Amendment Bill and said that some of the advantages of the Select Committee are that the Committee conducts public hearings and calls people for giving their suggestions and viewpoints, whereas the negative aspect is that the process after it gets referred to the Select Committee, it takes a long time. Specifically, on the Bill, he said following things:

1. DEFINITION OF DOMESTIC VIOLENCE

- Section 4(1) (a) of the GOI Bill defines domestic violence to include "habitual" assault and that it is an academic question whether a single act of cruelty would amount to domestic violence.
- Section 4(1) (c) of the GOI Bill is very broad and flexible and states "otherwise injures or harms the aggrieved person", within which all aspects of cruelty can get covered, so physical and sexual abuse would be covered under this clause.
- Economic abuse would be covered under section 125 Cr.P.C. and it is not required to be covered by any other law.
- The powers of the judiciary should not be limited but should remain as wide enough as possible, so that the judges can pass order to cover every possible situation. Also that the definition of domestic violence in the law should not be so broad so as to result in a possible misuse.

2. PLEA OF SELF DEFENCE

- Section 4(2) of the GOI Bill is important to safeguard any possible misuse of the law by women. He said that there is a section of women who are misusing the law and that the law-makers are apprehensive of any possible misuse of this law. He said that any student of Indian judicial process can say that section 498A of the IPC is being misused. He said that sections 96 and 97 of the IPC give right of self defence and so similarly, there is a need to address similar situations in a domestic relationship.
- He said that it is a jurisprudential question that when you are punishing a person, the plea of self defence has to be made available to him. He said that he is aware of the problem regarding giving a plea of self-defense to a

man but law needs to take a balanced view and concluded that it is an academic question that he would like to leave us with, for us to discuss and frame an alternative clause which would address the situation, where plea of self defence is really required. He said that we should all keep in mind that the larger purpose sought to be achieved by the law should be achieved without any improper use.

3. JURISDICTION TO MAGISTRATE

- He said that the jurisdiction to entertain complaints has been given to Magistrates instead of Civil Judges in the Bill, with the point of view that the Magistrates' Courts are more easily accessible in each district and *tehsil* and are quicker in giving orders.

4. PROTECTION ORDERS

- Section 14(1) of the GOI Bill gives the reliefs in alternate and uses the term "or", he said that judicial interpretations have already stated that the term "or" may be used to mean "and" and that's what was the intent at the time of drafting the law. But since an objection has come on this usage, this can be changed to "and" instead of "or" in each sub-clause of section 14(1).
- Section 14(1) (b) of the GOI Bill state about monetary relief, which is also provided under section 125 Cr.P.C. so this needs no elaboration as to what should be included in the monetary relief as the Supreme Court judgements already state what maintenance includes. He said that a clause can be added in this section to state that "such other directions including section 125 Cr.P.C."
- Section 14(1) (c) of the GOI Bill states that the court may pass "such other direction as may be considered necessary", which can cover any kind of order. It requires a good lawyer only to argue what he wants to get as relief for his client.

5. RIGHT TO RESIDE

- He said that the Supreme Court decisions already indicate that the maintenance amount would also include provision for residence and so, the same can be availed under the maintenance related provisions. Thus, there is no need to have any specific right to reside in the domestic violence Bill

6. He also said that this law has been drafted in the "unoccupied field" where no law exists and not in areas like residence and maintenance where law already exists.

7. To the question of right to residence in the shared household, he said that people from minority communities would oppose to it and after putting such a clause in the Bill, the same will have to be discussed with the religious leaders.

Dr. Aiyar, Secretary of the Department of Women and Child Development, Ministry for Human Resource Development, said following things about the Bill:

1. They had gone to the Law Ministry with the LC Draft and that the present draft can probably be referred to the Select Committee, which is headed by Mr. S. B. Chavan and has about 30 members.
2. Apart from giving comments on the GOI Bill, alternate drafts should also be sent to the Ministry.
3. Rules also need to be drafted on the Bill and the process should simultaneously start.
4. He also said that if the Ministry would have come to the women's groups before introducing in the Parliament, then it would have taken six months extra and to save time, it was introduced.
5. The Bill should probably come up for discussion in the second week of April.

Ms. Indira Jaising, Director of the Lawyer's Committee, Women's Rights Initiative, responded to Mr. Jaitley in the following manner:

1. There should be a policy underlying every legislation. The only possible Objective of a law on domestic violence can only be to Stop Violence. Whereas the policy of the GOI Draft seems to be to preserve the family and the marriage, and the same is already achieved by all the marriage laws and civil laws. The only "unoccupied field" is protecting a woman from domestic violence and this present draft does not achieve that.
2. RIGHT TO RESIDE
 - Insecurity in women in living in the shared household is the unoccupied field and there is no law that gives a woman a right to reside in the shared household.
 - She then explained how in the present law as well, injunction suits can be filed under section 38 of the Specific Relief Act read with O 39 Rules 1 and 2 of the Civil Procedure Code, so if we do not want to give a specific right in the new legislation, then there is probably no need for a new legislation.
3. PROTECTION ORDERS
 - She said that in the GOI Bill, there are not enough types of orders mentioned which a woman facing domestic violence can take. She then said that it is not enough to say that a good lawyer can claim those reliefs under clause (c) of Section 14 (1), as not many women can really afford to hire a good lawyer.

- She then stressed that we are not claiming the property to be given in the woman's name, we are only asking for a right to reside in the shared household, which she should anyway have. She then explained the concept of community of property and that anyone living in a property can only be dispossessed with due process of law. She explained that in section 3 (b) of the LCWRI Proposed Bill mentions that a woman can only be evicted out of the shared household with due process of law and not otherwise and such a clause is enough to provide safeguard and women cannot be dispossessed from their matrimonial home illegally.

4. PLEA OF SELF DEFENCE

- To this she said, it is completely unacceptable. She explained that a plea of self defence in law would be available to a person who can foresee a potential harm to himself but it is no one's case that women in this country are beating the male members of their family and so in self defence, men have to inflict violence.
 - She then explained that section 96 of the Indian Penal Code gives a general right of private defence, which is available for defence to any complaint under section 498A of the IPC. Also, that right to defence of property is available in section 97 *secondly* of the IPC in cases of theft, robbery, mischief or criminal trespass, or attempt to commit any such offence.
 - By giving the right to self defence in defence of property in the Domestic Violence Bill, will translate to mean that the wife can be charged of theft or trespass or robbery. She then said that the only objective that seems to be served with this clause is giving protection to men's property and give in him a right to throw women out of that property whenever desired.
5. She said that the government should be accountable to people about how they go about signing the International Treaties and Conventions and then do not abide by the content of the Convention. She gave specific examples of the CEDAW and the UN Declaration on violence against women and that the definition in the LCWRI Proposed Bill has been adapted from the UN Model definition of domestic violence. She also pointed how undemocratic is the law making process in the largest democracy of the world.
6. She finally said that this is a crucial moment in the women's movement in the country and that there is a need for all women's organisations, activists and associations to join hands and campaign against the GOI Bill on Domestic Violence.